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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,810	02/09/2004	Thomas Hofbrucker	DT-6756	9681

30377 7590 03/31/2006

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EXAMINER
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DURAND, PAUL R

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 03/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/775,810

Applicant(s)

HOFBRUCKER ET AL.

Examiner

Paul Durand

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-8 and 10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-8 and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. Claims 2-7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olvera et al (US 5,897,045) in view of Lin (US 6,779,697).

In regard to claim 10, Olvera discloses the invention substantially as claimed including a tool 10, pipe arrangement comprised of feed tube 130, fall pipe comprised of lower passage 172 of block 170, guide pipe in the form of upper and lower tubes 30 and 40, having an outlet (no number, but generally by 52 in figure 1b), head piece 50, secured to the tool and arranged at the outlet, with holding device 54, for receiving fasteners 4, drive in tool 140 for driving in members 2 ( see Fig.1 and C5,L20 – C6,L37). What Olvera does not disclose is the means for securing the headpiece at the outlet opening of the guide pipe. However, Lin teaches that it is old and well known in the art to provide a rotating head in the form of barrel 6, mounted and pivoted relative to the outlet opening of a guide pipe in the form of sleeve 4, the head being secured to the guide pipe through the use of cylindrical openings 610 and spring biased spherical locking bodies 52, with the possibility of pivotal movement relative to the guide pipe between a plurality of discrete positions in accordance with the orientation of the workpiece (see Figs.2,9 and C2,L16 – C3,L29).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Olvera with the means for pivotally securing the headpiece as taught by Lin for the purpose of operating the tool in accordance with the orientation of the workpiece

In regard to claims 2,3 and 7, Olvera discloses the invention substantially as claimed except the rotating headpiece, However, Lin teaches that it is old and well known in the art to provide a rotating head, which rotates to at least two rotating positions of substantially 90° and a locking device comprised of a setscrew 530 for the purpose of operating the tool around an obstacle (see Figs. 2 and 9). ). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Olvera with the rotating means as taught by Lin for the purpose of operating the tool around an obstacle.

In regard to claims 4-6, the modified invention of Olvera discloses the invention substantially as claimed except for the use of a locking device. However, Lin teaches that it is old and well known in the art to provide a locking device comprised of hole 42 in a head piece 4, locking body comprised of a ball bearing 52, pressed against rotating head and guide member 6, engaging two receptacles 610 and biased by coil springs 51 for the purpose of operating the tool around an obstacle (see Figs. 2,7,9,10 and C2,L16 – C3,L29). Furthermore, while the modified invention uses a coil spring, the examiner takes Official Notice that it would have been an obvious matter of design choice to use a leaf spring in lieu of a coil spring for the purpose of holding a locking member in place.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Olvera with the rotating means as taught by Lin for the purpose of operating the tool around an obstacle.

2. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Olvera et

al and Lin in view of Caringella et al (US 6,761,299).

The modified invention of Olvera discloses the invention substantially as claimed except for a locking pin to retain the head member on the tool. However, Caringella teaches that it is old and well known in the art to provide a pin in the form of screw 182, which attaches to key 184 and into hole 188 for the purpose of retaining a head portion on a rotating tool (see Fig.8). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the modified invention of Olvera with the pin retaining means as taught by Caringella for the purpose of retaining a head portion on a rotating tool.

### ***Response to Arguments***

3. Applicant's arguments filed 1/12/2006 have been fully considered but they are not persuasive.

Applicant argues that neither Lin nor Olvera disclose means for securing the headpiece at the outlet. The examiner does not agree. Claim 10 recites "means for securing the head piece at the outlet opening of the guide pipe". As noted in the rejection above, Lin guide shows a head piece in the form of barrel 6, mounted and rotated relative to the outlet opening of a guide pipe in the form of sleeve 4, see also figure 2. Figure 2 also discloses the means for pivotally securing the headpiece to the guide tube through the use of cylindrical openings and spring biased spherical locking bodies 52. Additionally, figure 9 of Lin also shows an alternative embodiment where the headpiece, with integrated magazine 70, is mounted to an end of barrel 6.

Applicant further argues that there is no motivation to combine the primary reference of Olvera with the teaching of Lin. The examiner does not agree. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, and as discussed in the previous Office Action, both references of Olvera and Lin are centered around a member driving tool, while Olvera does not disclose the means for rotating the head of the tool, there is sufficient motivation and suggestion to combine Lin with Olvera, since Lin clearly disclose the need to provide some sort of adjustability to a driving member tool allow a user to overcome obstacles on the work piece, which may be based on the tool profile.

Therefore, for the reason indicated above, the rejection is deemed proper.

### ***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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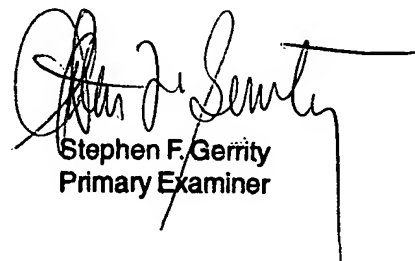
mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 571-272-4459. The examiner can normally be reached on 0730-1800, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paul Durand  
March 23, 2006



Stephen F. Gerrity  
Primary Examiner